



United States Government

NATIONAL LABOR RELATIONS BOARD

Region 2

26 Federal Plaza – Room 3614

New York, New York 10278-0104

Telephone: (212) 264-0300
Facsimile: (212) 264-2450

February 18, 2011


National Labor Relations Board
Attn.: Lester A. Heltzer, Executive
Secretary
1099 14th Street, N.W.
Washington, D.C. 20570

Re: Sprain Brook Nursing Home, LLC
Case No. 2-CA-40231

Dear Mr. Heltzer:

Enclosed please find the Acting Regional Director's Opposition to Petition to Revoke Investigatory Subpoena Duces Tecum B-624948. I have also enclosed an affidavit of service. Thank you for your attention to this matter.

Very truly yours,


David Gribben
Field Attorney

Encl.

cc: Jeffrey A. Meyer, Esq.
Kaufman, Schneider & Bianco, LLP
135 Crossways Park Drive, Suite 201
Woodbury, NY 11797-2005

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

SPRAIN BROOK MANOR
NURSING HOME, LLC,

Employer

And

Case No. 2-CA-40231

1199 SEIU UNITED HEALTHCARE
WORKERS EAST

Charging Party

AFFIDAVIT OF SERVICE

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated below I served the Acting General Counsel's Opposition to Petition to Revoke Subpoena by fax upon the addressee below.

Jeffrey A. Meyer, Esq.
(516) 681-1101
Kaufman, Schneider & Bianco, LLP
135 Crossways Park Drive, Suite 201
Woodbury, NY 11797-2005

Subscribed and sworn to this:
18th day of February, 2011

Designated Agent:



National Labor Relations Board

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

SPRAIN BROOK MANOR NURSING CENTER, LLC
Employer

and

CASE NO. 2-CA-40231

**1199 SEIU UNITED HEALTHCARE
WORKERS EAST**
Charging Party

OPPOSITION TO PETITION TO REVOKE SUBPOENA *DUCES TECUM*

National Labor Relations Board, Region 2, by its Field Attorney, David Gribben, hereby opposes Sprain Brook Manor Nursing Center, LLC (Sprain Brook or the Employer) Petition to Revoke Investigative Subpoena *Duces Tecum* (No. B-624948) served on it under the authority of, Elbert F. Tellem, Acting Regional Director Region 2, National Labor Relations Board. For the reasons set forth below, Sprain Brook's Petition to Revoke is without merit and should be denied in its entirety.

I. The Unfair Labor Practice Charge in Case No. 2-CA-40231

On December 1, 2010, 1199 SEIU, United Healthcare Workers East (the Union) filed an unfair labor practice charge in Case No. 2-CA-40231 alleging that Sprain Brook violated Sections 8(a)(1) (3) and (4) of the National Labor Relations Act (the Act) on or about November 9, 2010 by (i) unlawfully terminating Catherine Alonso (Alonso) in retaliation for her activities on behalf of the Union and its campaign for a first collective bargaining agreement; (ii) unlawfully terminating Alonso in retaliation for her participation in *Sprain Brook Manor*, 351 NLRB No. 75 (2007) and *Mattina v. Sprain Brook*, Case No. 06 Civ. 4262 (S.D.N.Y. 2006); (iii) threatening Alonso that if she sought Union representation to contest her discharge she would

lose the monthly compliance payments still owed to her by Sprain Brook in connection with *Sprain Brook Manor*, 351 NLRB No. 75(2007); and (iv) making unspecified threats of reprisal against Alonso for seeking union representation. A copy of the charge is attached hereto as Exhibit A.

As is its customary practice, the Region sought Sprain Brook's cooperation in the investigation of the charge. In a letter dated December 22, 2010, the Region requested Sprain Brook's position to the allegations of the charge, Alonso's personnel file, and any complaints filed against Alonso. To date, Sprain Brook has failed to respond to the Region's request and has not submitted any written statement in support of its position. On January 1, 2011, in furtherance of the investigation, under the authority of Elbert F. Tellem, Acting Regional Director, the Region served Sprain Brook with an investigative Subpoena *Duces Tecum* No. B-624948 (the subpoena).¹ The subpoena sought the production of documents relating to the allegation that the Sprain Brook's decision to terminate Alonso's employment was unlawful. The documents are also necessary to enable the Acting Regional Director to evaluate the merits of the Sprain Brook's defense that it would have taken the same action even in the absence of the employees' protected activities. *Wright Line*, 251 NLRB 1083 (1980), *enf'd*, 662 F.2d 899 (1st Cir. 1981). A copy of the subpoena is attached hereto as Exhibit B.

On January 28, 2011, the Employer served Celeste J. Mattina, Regional Director, Region 2, with a Petition to Revoke Subpoena *Duces Tecum* No. B-624948. A copy of the Petition to Revoke is attached hereto as Exhibit C.

¹ The date of issuance of the Subpoena was January 21, 2011. Due to a clerical error, the date that appears on the subpoena as the date of issuance is February 21, 2011. The Employer did not raise this typographical error as an objection in their petition to revoke the subpoena.

II. Argument

Section 11(1) of the Act authorizes subpoenas for evidence “that relates to any matter under investigation or in question.” Information sought in an administrative subpoena need only be “reasonably relevant.” *NLRB v. American Medical Response, Inc.*, 438 F.3d 188, 192 (2d Cir 2006) (citing *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950)). Revocation of a subpoena served pursuant to Section 11(1) of the Act is appropriate only where “the evidence whose production is required does not relate to any matter under investigation, or any manner in question in such proceedings, or . . . the subpoena does not describe with sufficient particularity the evidence whose production is required.” Subpoenaed documents should be therefore produced if they relate to any matter in question, or can provide “background information” or lead to other evidence potentially relevant to an allegation should the Regional Director determine that complaint should issue. *Cooking Good Division of Perdue Farms, Inc.*, 323 NLRB 345, 348 (1997), *enfd in relevant part*, 144 F.3d 830 (D.C. Cir. 1998). The Board has determined that in deciding issues of enforcement or revocation of subpoenas it will seek guidance from the Federal Rules of Civil Procedure, even though the rules are not binding on the Agency. *Marian Manor for the Aged and Infirm*, 333 NLRB 1084, 1084 (2001) (citing *Brink’s Inc.*, 281 NLRB 468, 469 (1986)).

Sprain Brook’s Petition to Revoke should be denied since the Acting Regional Director’s subpoena is relevant to the issues under investigation, and meets all the requirements of Section 11 of the Act and Section 102.31 of the Board’s Rules and Regulations. The documents sought in the subpoena are plainly relevant to the Union’s allegation that Alonso was unlawfully terminated, and to analyze any possible defenses for Sprain Brook. The subpoena further describes with sufficient particularity the evidence whose production is required.

Sprain Brook's General Objections

Sprain Brook argues that the subpoena should be revoked on the grounds that it does not relate to any matter under investigation or in question in the proceedings. The standard for determining relevance under the Rules and case law governing proceedings before the National Labor Relations Board is very broad. Under the Board's Rules and Regulations the subpoena shall only be revoked on relevance grounds only if it does not relate to any matter under investigation or in question in the proceedings. Board's Rules and Regulations, Section 102.31 (b). See also *United States v. Powell*, 379 U.S. 48, 57-58 (1964) (IRS need only establish that the subpoena was for legitimate purpose and the subpoena was relevant for that purpose); *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950); *NLRB v. Williams*, 396 F.2d 247, 249 (7th Cir. 1968) (subpoena proper so long as the material called for relates to a matter under investigation or in question).

In the instant case, the document request encompassed by the subpoena at issue herein clearly meets these tests. Item 1 seeks the production of "Alonso's entire personnel file." Item 2 seeks "all documents which show, reflect, or evidence complaints made against Alonso." Item 3 seeks "all documents which show, reflect or evidence discipline issued to employees of Sprain Brook for reasons similar to the reasons relied upon for terminating Alonso, including but not limited to documents reflecting discipline or discharge of employees for complaints about performance, for the time period from December 1, 2008 to December 1, 2010." The Charge alleges that Alonso was discriminatorily discharged. The evidence requested will establish whether or not Sprain Brook had a lawful reason for discharging Alonso. Furthermore, Counsel for the General Counsel should be permitted to ascertain what, if any, paperwork exists regarding

employees who were similarly disciplined for the same reasons Sprain Brook allegedly discharged Alonso and whether Sprain Brook has a system of progressive discipline. These requested documents are clearly relevant under the broad standard applied by the Board as the documents relate to Sprain Brook's *Wright Line* defense and disparate treatment.

Sprain Brook argues that the subpoena constitutes harassment, is unreasonable in scope, overly broad, and unduly burdensome in seeking documents that are not relevant to this matter. The courts have noted that for a request to be considered burdensome, it must be unreasonable. *NLRB v. Brown Transport Corp.*, 620 F. Supp. 648, 652 (ND Ill. 1985), *citing Dow Chemical Co. v. Allen*, 672 F.2d 1262, 1267 (7th Cir. 1982) and *FTC v. Texaco, Inc.*, 555 F.2d 862, 882 (D.C. Cir. 1977). It is difficult to establish that a request is unreasonable where the agency inquiry is pursuant to a lawful purpose and the requested documents are relevant to that purpose. *Id.* The lawful purpose of the subpoena in the instant matter is to investigate an allegation in an unfair labor practice charge. As will be demonstrated more fully below, the documents requested are relevant to this inquiry. Further, for a request to be considered burdensome, the subpoenaed party must show that compliance would threaten the normal operation of business, something that Sprain Brook has not asserted much less established. *See NLRB v. American Medical Response, Inc.*, 438 F.3d 188, 192 (2d Cir 2006) (“[C]ourts have refused to modify investigative subpoenas unless compliance threatens to unduly disrupt or seriously hinder normal operations of a business.”) (citations omitted); *NLRB v. Carolina Food Processors Inc.*, 81 F.3d 507, 513 (4th Cir. 1996) (“Holding that a subpoena is not unduly burdensome merely because it requires the production of a large number of documents. The burden might be found sufficient to overturn a subpoena only if it amounts to an undue disruption or serious hindrance to the normal operation of a business). Sprain Brook has not even come close to establishing that the

request for documents here is burdensome and therefore the allegation that the subpoena is unreasonable and constitutes harassment is unsupported.

Finally, Sprain Brook maintains that the subpoena is premature and should be revoked since the Board has not issued a complaint in this matter. Section 11(1) of the Act authorizes the issuance of subpoenas where the evidence relates "...to any matter under investigation or in question." Clearly, Section 11(1) provides Regions the authority to issue subpoenas in the course of a pre-complaint investigation. Moreover, Regions often issue subpoenas in the pre-complaint investigative stage in order to determine if a complaint will issue in a case. Therefore, the subpoena should not be revoked on the ground that it was untimely.

Board Rule 102.31(b)

In support of its petition to revoke the subpoena Sprain Brook specifically asserts that the subpoena violated Board Rule 102.31(b) which provides that the Board "shall revoke the subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reasons sufficient in law the subpoena is otherwise invalid." As will be further demonstrated below in discussing the specific paragraphs of the subpoena, the Regional Director's subpoena was narrowly drafted to obtain documents that relate to the allegation that Sprain Brook unlawfully terminated Alonso's employment. The subpoena is clearly not overly broad and all items that have been requested are relevant.

Item 1&2

In further support of its petition, Sprain Brook asserts that Items 1 & 2 are overly burdensome and unreasonable in scope. Item 1 seeks the production of “Alonso’s entire personnel file.” Item 2 seeks “all documents which show, reflect, or evidence complaints made against Alonso.” Sprain Brook argues that these two items are not related to, or limited in any relevant way, to the Charge’s allegation. Sprain Brook asserts that the instant charge makes no reference to employee complaints against Alonso. However, the charge does allege that Alonso was unlawfully terminated. The evidence sought will allow the Regional Director to evaluate the merits of Sprain Brook’s *Wright Line* defense. It is well-established that the Board’s subpoena power permits it to seek documents to assess the merits of likely defenses. *See NLRB v. North Bay Plumbing, Inc.*, 102 F.3d 1005, 1008 (9th Cir. 1996) (“[A] subpoena is proper even when it is designed to produce material concerning a defense that may never arise; the focus is on relevancy to the investigation, not relevancy to the issues at the hearing (citing *NLRB v. North American Van Lines, Inc.*, 611 F.Supp. 760, 765 (N.D. Ind. 1985)). Therefore, the documents requested in Items 1 & 2 are reasonable because they relate to Sprain Brook’s possible defense to the charge.

Item 3

In further support of its petition, Sprain Brook asserts that Item 3 is overly burdensome and unreasonable in scope. Item 3 seeks “all documents which show, reflect or evidence discipline issued to employees of Sprain Brook for reasons similar to the reasons relied upon for terminating Alonso...” It is beyond question that the discipline and/or discharge of other employees for offenses similar to those allegedly committed by the discriminatees is relevant to

an employer's ultimate motivation with respect to the discriminatees' discharges. *See, e.g., Ferguson-Williams, Inc.*, 322 NLRB 695, 703-704 (1996) (employer's asserted defense pretextual given disparate treatment of discriminatee compared to other employees who engaged in similar use of profane language). Pretext may also be established by comparing the treatment of a discriminatee with the treatment of other employees who purportedly committed other, more serious offenses. *See Pro-Spec Painting, Inc.*, 339 NLRB 946, 950 (2003) (pretext established by evidence that employer "tolerated a lot worse" than discriminatee's conduct). Furthermore, evidence of disparate treatment substantially detracts from an employer's attempt to meet its *Wright Line* burden of proof. *Ellicot Development Square Corp.*, 320 NLRB 762, 774-775 (1996), *enfd.* 104 F.3d 354 (2d Cir. 1996). In the present case, Sprain Brook asserts that Alonso voluntarily resigned, and therefore the request for information about other employees presupposes facts not in evidence. Moreover, Sprain Brook argues, the charge is "singularly" limited to Alonso. However, while Sprain Brook maintains that Alonso voluntarily resigned, despite the Region's requests, it has not provided any evidence to support that assertion. The charge alleges that Alonso was unlawfully terminated, not that she resigned. Sprain Brook's argument that the charge is "singularly" limited to Alonso is also invalid. Evidence of disparate treatment, or lack thereof, is relevant to Sprain Brook's motivation in the alleged dismissal of Alonso. Sprain Brook's argument that these rudimentary elements of the *Wright Line* analysis are inapplicable simply because it asserts that Alonso voluntarily resigned from her former position is without merit. As a result, Item 3 seeks relevant information.

Attorney Client Privilege

Sprain Brook argues that the subpoena should be revoked on the grounds that it seeks documents that are confidential and proprietary. In its Petition to Revoke, Sprain Brook asserts that the subpoena requests are overly broad because they may include documents protected by the “attorney client privilege,” the “attorney work product privilege” and the privilege involving materials prepared in anticipation for trial. Sprain Brook cites to the General Counsel’s definition of the word “document” which includes documents “possess[ed]” by the Employer’s attorney, and argues that the subpoena is overly broad and violates the attorney client privileges. However, Federal courts require that a party claiming that the information sought is confidential, and therefore exempt from disclosure, show that harm will flow from disclosure of such information. Federal courts have consistently held that “blanket and generalized” assertions of confidentiality, absent allegations regarding specific harm, are not sufficient to sustain a motion to quash. *United States v. International Business Machines Corp.*, 81 F.R.D. 628, 630 (S.D.N.Y. 1979) (assertions that information is “confidential and sensitive” and that disclosure would cause “severe and irreparable injury” not sufficient). Indeed, the party moving to quash “must show, with specificity, that disclosure will work a clearly defined and serious injury to the moving party.” *Composition Roofers Union Local 30 Welfare Trust Fund v. Graveley Roofing Enterprises, Inc.*, 160 F.R.D. 70, 72 (E.D.Pa. 1995). Here, Sprain Brook fails to identify which documents are supposedly exempt from disclosure on the grounds of confidentiality, why they are confidential and how disclosure would cause serious harm. Sprain Brook’s bare assertion, that the definition of documents in the subpoena includes items possessed by Sprain Brook’s attorney, does not meet this burden because the assertion is too broad and not specific. For these

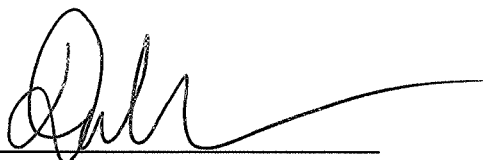
reasons, Sprain Brook's objection on the grounds of confidentiality is insufficient to support its motion to revoke the subpoena.

III. Conclusion

Based on the foregoing, the Acting Regional Director, Region 2 respectfully requests that the Sprain Brook's Petition to Revoke Subpoena *Duces Tecum* be denied in its entirety. The Acting Regional Director further requests that Sprain Brook be directed to produce all documents sought in the Subpoena *Duces Tecum*.

Dated: February 18, 2011
New York, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. Gribben', with a long horizontal flourish extending to the right.

David Gribben, Field Attorney
National Labor Relations Board, Region 2
26 Federal Plaza, Room 3614
New York, New York 10278
Tel. (212) 264-6848

Exhibit A

FORM NLRB-301
(11-99)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

FORM EXEMPT UNDER 44 U.S.C. 3512

DO NOT WRITE IN THIS SPACE

Case
2-CA-40231Date Filed
12/1/10

INSTRUCTIONS:

File an original and 4 copies of this charge with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Sprain Brook Manor Nursing Home, LLC		b. Number of Workers Employed Approx. 90
c. Address (street, city, State, ZIP, Code) 77 Jackson Avenue Scarsdale, New York 10583-3140	d. Employer Representative Moses Strulovich,	e. Telephone No. (914) 472-3200 Fax No. (914) 472-5443
f. Type of Establishment (factory, mine, wholesaler, etc.) nursing home	g. Identify Principal Product or Service health care	
h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a), subsections (1) and (3) and (4) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.		

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices.)

Since on or about November 9, 2010, the above-named Employer, through its officers, agents and representatives, unlawfully terminated the employment of Catherine Alonso in retaliation for her activities in support of the Union and its campaign for a first collective bargaining agreement.

Since on or about November 9, 2010, the above-named Employer, through its officers, agents and representatives, unlawfully terminated the employment of Catherine Alonso in retaliation for her participation in Sprain Brook Manor, 351 NLRB No. 75 (2007) and in *Mattina v. Sprain Brook Manor*, Case No. 06 Civ. 4262 (S.D.N.Y. 2006).

Since on or about November 9, 2010, the above-named Employer, through its officers, agents and representatives, threatened Catherine Alonso that if she sought Union representation to contest her discharge, she would lose the monthly compliance payments still owed to her by the Employer in connection with Sprain Brook Manor, 351 NLRB No. 75 (2007).

On or about November 9, 2010, the above-named Employer, through its officers, agents and representatives, made threats of unspecified reprisals against Catherine Alonso for seeking union representation.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

1199 SEIU United Healthcare Workers East

4a. Address (street and number, city, State, and ZIP Code)

330 West 42nd Street, 15th Floor
New York, NY 100364b. Telephone No.
(3) and (4)Fax No.
212-228-7654

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

Service Employees International Union

8. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By



(Signature of representative or person making charge)

Attorney

(Title, if any)

Address

Gladstein, Reif & Meginniss, 817 Broadway, 6th Fl., NY, NY 10003

Fax No. 212-228-7654

212-228-7727

(Telephone No.)

November 30, 2010

Date

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

Exhibit B

SUBPOENA DUCES TECUM

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

To Custodian of Records Sprain Brook Manor Nursing Home, LLC

77 Jackson Avenue, Scarsdale, NY 10583-3140

As requested by Christen Ritter, Board Agent

whose address is 26 Federal Plaza Room 3614, New York, NY 10278-0104

(Street)

(City)

(State)

(ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE Christen Ritter or any other

designated Board Agent

of the National Labor Relations Board

at 26 Federal Plaza Room 3614

in the City of New York

on the 1st day of February 20 11 at 9 : 30 (a.m.) (p.m.) or any adjourned

or rescheduled date to testify in _____

Sprain Brook Manor Nursing Home, LLC 2-CA-40231

(Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

See Attached

In accordance with the Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings), objections to the subpoena must be made by a petition to revoke and must be filed as set forth therein. Petitions to revoke must be received within five days of your having received the subpoena. 29 C.F.R. Section 102.111(b) (3). Failure to follow these regulations may result in the loss of any ability to raise such objections in court.

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

B - 624948

Issued at

this 21st day of February

20 11



Lesfer A. Neltzer

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

APPENDIX TO SUBPOENA

Definitions

The word “document” or “documents” means any existing printed, typewritten, handwritten, or otherwise recorded material of whatever character, including, but not limited to, letters; correspondence; memoranda; interoffice communications; telegrams; mailgrams; electronic messages; files; drawings; graphs; charts; photographs; minutes; notes; statements; calendars; affidavits; agreements; contracts; summaries, records or notes of personal or telephone conversations, interviews or meetings; mechanically or electronically recorded material, or transcripts thereof; diaries; reports; books; records; telephone bills; tax records; bookkeeping and/or accounting work papers; invoices; bills of lading; billing slips; delivery records; receiving records; microfilm; audio or video tapes; computer tapes or disks and all data contained thereon that may be retrieved, including material stored on hard disks; and any carbon, photographic, or other duplicate of such material in the possession of, custody of, control of, or available to the subpoenaed party or its agents or representatives, including counsel, or any other person acting in cooperation with, in concert with, or on behalf of the subpoenaed party.

“Employer” means, Sprain Brook Manor Nursing Home, LLC, and its officers, agents and representatives.

Items to be produced

1. Catherine Alonso’s entire personnel file.
2. All documents which show, reflect or evidence complaints made against Catherine Alonso.
3. All documents which show, reflect or evidence discipline issued to employees of the Employer for reasons similar to the reason relied upon for terminating Catherine Alonso, including but not limited to documents reflecting discipline or discharge for inadequate performance of duties and documents reflecting discipline or discharge of employees for complaints about performance, for the time period from December 1, 2008 to December 1, 2010.

Exhibit C



KAUFMAN DOLOWICH VOLUCK & GONZO LLP

ATTORNEYS AT LAW

Jeffery A. Meyer, Esq.
jmeyer@kdvglaw.com

January 28, 2011

VIA FACSIMILE (212) 264-2450
AND FIRST CLASS MAIL

Celeste Mattina
Regional Director
National Labor Relations Board -Region 2
26 Federal Plaza, Room 3614
New York, New York 10278-0104

RECEIVED
NLRB
REGION 2
2011 FEB -2 PM 12:20
NEW YORK, NY

Re: *Sprain Brook Manor Nursing Home, LLC;*
Case Nos. 2-CA-40231 (Catherine Alonso)

Dear Ms. Mattina:

As you know, this firm represents the Respondent in connection with the above-referenced matter. Enclosed please find an original and one (1) copy of Respondent's "Petition to Revoke Subpoena Pursuant to Section 102.31(b) of the National Labor Relations Board Rules and Regulations".

If you have any questions, please call.

Very truly yours,
Kaufman Dolowich Voluck & Gonzo LLP



Jeffery A. Meyer

Enclosures

ND: 4852-4109-7480, v. 1

135 CROSSWAYS PARK DRIVE, SUITE 201, WOODBURY, NEW YORK 11797

PHONE: 516.681.1100 | FAX: 516.681.1101 | WWW.KDVGLAW.COM

NEW YORK

PHILADELPHIA

SAN FRANCISCO

NEW JERSEY

LOS ANGELES

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

-----X
SPRAIN BROOK MANOR NURSING HOME, LLC

and

Case No. 2-CA-40231

1199 SEIU UNITED HEALTHCARE WORKERS
EAST

-----X

PETITION TO REVOKE SUBPOENA PURSUANT TO SECTION
102.31(b) OF THE NATIONAL LABOR RELATIONS BOARD
RULES AND REGULATIONS

To: Celeste J. Mattina, Regional Director
National Labor Relations Board – Region 2
26 Federal Plaza – Room 3614
New York, New York 10278-0104

Pursuant to Section 102.31(b) of the National Labor Relations Board Rules and Regulations, Series 8 (hereinafter "Board Rule"), as amended, Kaufman Dolowich Voluck & Gonzo LLP, attorneys for Sprain Brook Manor Nursing Home, LLC (hereinafter referred to as "Respondent") hereby petitions that the Subpoena Duces Tecum (with attached Rider) served upon Respondent by the Counsel for the General Counsel (i.e. Subpoena No.: B-624948) (hereinafter the "Subpoena") on or about January 24, 2011 be revoked for numerous reasons including, the Subpoena, in many instances, does not "relate to any matter under investigation or in question in the proceedings," constitutes harassment, is unreasonable in scope, overly broad, and unduly burdensome in seeking documents that are not relevant to this matter. Moreover, Respondent argues that the instant Subpoena is premature and should otherwise be revoked as the Board has not yet issued a Complaint in this matter. Other objections to the Subpoena are set forth below. A copy of the Subpoena (and the accompanying Rider) is attached as Exhibit "A" hereto.

In support of its petition, Respondent also asserts:

(a) Board Rule 102.31(b) provides that the Board "shall revoke the subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid."

(b) In enumerated paragraph 3 of the Subpoena Rider (hereinafter "Rider"), Counsel for the General Counsel seeks "all documents which show, reflect or evidence discipline issued to employees of the Employer for reasons similar to the reason relied upon for terminating Catherine Alonso..." As Ms. Alonso voluntarily resigned, and was not terminated, the instant request presupposes facts not in evidence and is therefore improper. Moreover, Respondent believes that it is overly burdensome and patently unreasonable in scope. Such documents are wholly irrelevant to the allegations arising from the instant Charge which is singularly limited to Ms. Alonso. As such, this request serves no purpose but to harass Respondent and place an undue burden upon same. Again, such a request is unreasonable inasmuch as it seeks documents that are irrelevant to this proceeding (and is otherwise designed to waste Respondent's resources in subpoena compliance).


(c) As to the Rider's first and second enumerated requests, Respondent believes that it is overly burdensome and unreasonable in scope. This request serves no purpose but to harass Respondent and place an undue burden upon same. The Subpoena requests any and all information that would "show, reflect or evidence complaints made against Catherine Alonso." The Rider is not related to or limited in any relevant way to the Charge's allegations. The instant Charge makes no reference to employee complaints against Ms. Alonso. It appears that Counsel for the General Counsel is seeking documents and records not pertinent to the instant Charge and/or any allegation which is in any way relevant to the purported unlawful acts set forth therein. Moreover, Respondent believes that such open-ended requests are overly burdensome and unreasonable in scope. Counsel for the General Counsel's attempt to obtain such entirely irrelevant information from Respondent is exploitive and constitutes an abuse of the Board's processes and resources. Again, such a request is patently unreasonable and constitutes harassment of Respondent inasmuch as it seeks documents that are entirely irrelevant to this proceeding (and is otherwise designed to waste Respondent's resources in subpoena compliance).

(d) Many of the foregoing enumerated requests are also overly broad given that any response may include documents protected by the "attorney client privilege," the "attorney work product privilege" and the privilege involving materials prepared in anticipated for trial. In fact, in the Counsel for the General Counsel's definition of the word "document," it explicitly includes documents "possess[ed]" by Respondent's attorneys. Such an open-ended reach for documents requires the revocation of the Subpoenas in their entirety.

For the above reasons, the undersigned respectfully requests that, to the extent requested, the Subpoena which is attached as Exhibit "A" hereto be revoked forthwith.

Dated: Woodbury, New York
January 28, 2011

Respectfully submitted,
Kaufman Dolowich Voluck & Gonzo LLP
Attorneys for Respondent

By: 
Jeffery A. Meyer
135 Crossways Park Drive, Suite 201
Woodbury, New York 11797
(516) 681-1100

SUBPOENA DUCES TECUM

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

To Custodian of Records Sprain Brook Manor Nursing Home, LLC

77 Jackson Avenue, Scarsdale, NY 10583-3140

As requested by Christen Ritter, Board Agent

whose address is 26 Federal Plaza Room 3614, New York, NY 10278-0104

(Street)

(City)

(State)

(ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE Christen Ritter or any other

designated Board Agent

of the National Labor Relations Board

at 26 Federal Plaza Room 3614

in the City of New York

on the 1st day of February 20 11 at 9 : 30 (a.m.) (p.m.) or any adjourned

or rescheduled date to testify in _____

Sprain Brook Manor Nursing Home, LLC 2-CA-40231

(Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

See Attached

In accordance with the Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings), objections to the subpoena must be made by a petition to revoke and must be filed as set forth therein. Petitions to revoke must be received within five days of your having received the subpoena. 29 C.F.R. Section 102.111(b) (3). Failure to follow these regulations may result in the loss of any ability to raise such objections in court.

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

B - 624948

Issued at

this 21st day of February

20 11



Lesfer A. Neltzer

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

APPENDIX TO SUBPOENA

Definitions

The word “document” or “documents” means any existing printed, typewritten, handwritten, or otherwise recorded material of whatever character, including, but not limited to, letters; correspondence; memoranda; interoffice communications; telegrams; mailgrams; electronic messages; files; drawings; graphs; charts; photographs; minutes; notes; statements; calendars; affidavits; agreements; contracts; summaries, records or notes of personal or telephone conversations, interviews or meetings; mechanically or electronically recorded material, or transcripts thereof; diaries; reports; books; records; telephone bills; tax records; bookkeeping and/or accounting work papers; invoices; bills of lading; billing slips; delivery records; receiving records; microfilm; audio or video tapes; computer tapes or disks and all data contained thereon that may be retrieved, including material stored on hard disks; and any carbon, photographic, or other duplicate of such material in the possession of, custody of, control of, or available to the subpoenaed party or its agents or representatives, including counsel, or any other person acting in cooperation with, in concert with, or on behalf of the subpoenaed party.

“Employer” means, Sprain Brook Manor Nursing Home, LLC, and its officers, agents and representatives.

Items to be produced

1. Catherine Alonso’s entire personnel file.
2. All documents which show, reflect or evidence complaints made against Catherine Alonso.
3. All documents which show, reflect or evidence discipline issued to employees of the Employer for reasons similar to the reason relied upon for terminating Catherine Alonso, including but not limited to documents reflecting discipline or discharge for inadequate performance of duties and documents reflecting discipline or discharge of employees for complaints about performance, for the time period from December 1, 2008 to December 1, 2010.